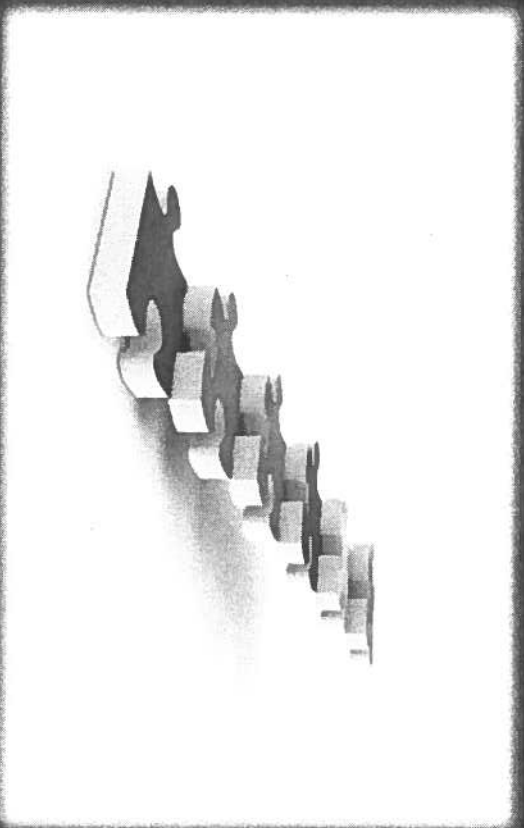


MATERIAL FLAWS TO HOUSE BILL 5223

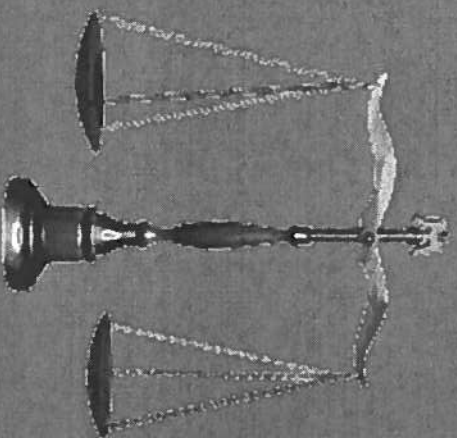


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MATERIAL FLAWS TO HOUSE BILL 5223

1. Minimizes Local Control & Standards;
2. Inadvertently Undermines 2011 Education Reforms;
3. Increases Risk of Litigation for School Districts; and
4. Significantly Decreases Impact of “Minimally Effective” Rating.

Minimizes Local Control and Standards



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HOUSE BILL 5223 MINIMIZATION OF LOCAL CONTROL AND STANDARDS

The following slides present some examples of the constraints set by HB 5223, which requires generally unobtainable standards for districts using a locally developed or adopted observation tool.

HOUSE BILL 5223 MINIMIZATION OF LOCAL CONTROL AND STANDARDS

Page 26, Section 380.1249(6):

(v) For an observation tool adapted from a commercial observation tool, detailed documentation that shows any changes in performance language for each indicator, justification for the change, and evidence that the adaptations provide equal or greater rigor than at least 1 of the 4 observation tools listed in subsection (5)(A)(1).

HOUSE BILL 5223 MINIMIZATION OF LOCAL CONTROL AND STANDARDS

Page 25-26, Section 380.1249(6)(1):

- (I) Be based on a published research base for the instructional framework and rubric that includes all of the following:
 - (i) Empirically based studies of teaching and coaching practice.

HOUSE BILL 5223 MINIMIZATION OF LOCAL CONTROL AND STANDARDS

Page 25-26, Section 380.1249(6)(I) (cont'd):

(iii) Descriptions of practice from an identified panel of expert observers that include instructional coaches and school administrators working daily with teachers on improving practice.

HOUSE BILL 5223 MINIMIZATION OF LOCAL CONTROL AND STANDARDS

Page 25-26, Section 380.1249(6)(I) (cont'd):

(iv) *A detailed summary of multistage process of watching videos and visiting classrooms, compiling observations and wonderings about instructional practice, and evidence for each indicator*

HOUSE BILL 5223 MINIMIZATION OF LOCAL CONTROL AND STANDARDS

Page 26, Section 380.1249(6)(J):

(J) Contain a detailed review and revision plan that includes an empirically sound study of rater reliability, qualitative review of feedback from teachers and administrators within the system, impact on teachers' professional practice, and pupil performance to assure validity and reliability of the framework.

HOUSE BILL 5223

MINIMIZATION OF LOCAL CONTROL AND STANDARDS

Page 27, Section 380.1249(6)(M):

(M) If the observation tool does not have available documentation about its reliability and validity, there is in place a plan for gathering relevant data on the observation tool's reliability and validity that will result in submission of evidence of the observation tool's reliability and validity within 3 years.

HOUSE BILL 5223 MINIMIZATION OF LOCAL CONTROL AND STANDARDS

Page 27, Section 380.1249(6)(M) (cont'd):

...If a school district, intermediate school district, or public school academy fails to submit evidence sufficient to demonstrate the reliability and validity of their local observation tool within 3 years, the school district, intermediate school district, or public school academy may not continue to use the observation tool...

HOUSE BILL 5223
MINIMIZATION OF
LOCAL CONTROL AND STANDARDS

Page 26, Section 380.1249(6)(L)

(L) If it is an adapted form of a commercial observation tool, the adaptations do not threaten the validity of the inferences that are based on the commercial performance evaluation system

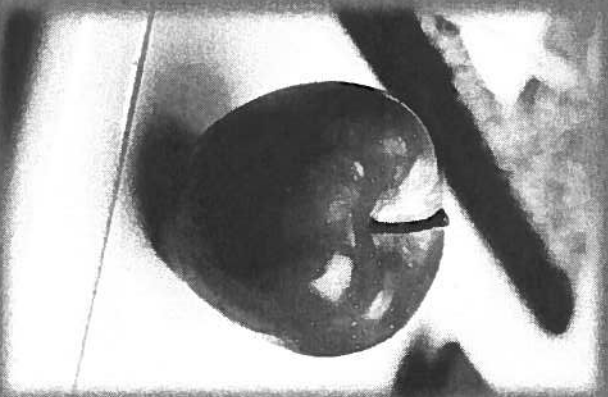
HOUSE BILL 5223

MINIMIZATION OF LOCAL CONTROL AND STANDARDS

Page 26, Section 380.1249(6)(L):

(H) Have a system for monitoring the fairness, consistency, and objectivity of the system within and across local schools, including specific metrics to be used. At a minimum, the school district, intermediate school district, or public school academy shall consider how the distribution of ratings compares with teacher observation ratings and student growth data

Undermines the 2011 Education Reforms



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HOUSE BILL 5223 UNDERMINES 2011 TENURE REFORMS

CONSIDERATION OF OTHER RELEVANT FACTORS:

Page 23 (Section 380.1249(5)(B)):

The practice component shall also be based on locally adopted factors that are indicative of a teacher's practice. These shall include 1 or more of the following: instructional leadership abilities, teacher and pupil attendance, professional contributions, training, progress report achievement, school improvement plan progress, peer input, and pupil and parent feedback.

HOUSE BILL 5223 UNDERMINES 2011 TENURE REFORMS

House Bill 5223 would mandate a rigid system in which teacher evaluations are derived from two components:

1. the “student growth and assessment component”—50% of overall evaluation; and
2. “practice component”—50% of overall evaluation.

HOUSE BILL 5223 UNDERMINES 2011 TENURE REFORMS

“STUDENT GROWTH AND ASSESSMENT

COMPONENT”

- 50 % of overall evaluation.
- measured by student standardized test scores.

“PRACTICE COMPONENT”

- 50 % of overall evaluation.
- 80 % must be based on classroom observations.
- Not more than 20 % (only 10 % of overall evaluation) may be based on “locally adopted factors,” such as instructional leadership, teacher/pupil attendance, peer input, and pupil/parent feedback.

DISTRICT'S ABILITY TO EVALUATE TEACHERS AS ROLE MODELS

- The United States Supreme Court has stated that “a teacher serves as a role model for his students, exerting a subtle but important influence over **their perceptions and values.**” *See, Ambach v Norwick*, 441 US 68, 99 (1979); *see also Satterfield v Grand Rapids Pub Schools*, TTC 94-8.
- The Commission has relied on feedback from teachers, administrators, parents and students to determine a teacher’s fitness to teach, given that they are to be role models for students.

Charles Gladstone v Highland Park Board of Education, TTC 80-14

FACTS

- Middle school teacher was charged with abuse of sick leave for using 63 consecutive sick days (maximum under contract), during which he maintained full time employment with the Ford Motor Company.
- The teacher alleged that the school environment to which he was assigned, included teachers paddling and punching students for minor offenses and students frequently fighting amongst themselves and the prevalence of violence, affected him both physically and emotionally, so he could not sleep or attend school.
- The district alleged that the teacher had obtained a medical excuse from a which permitted him to draw sick benefits from the school while continuing to report to work at Ford.

Charles Gladstone v Highland Park Board of Education, TTC 80-14

The Commission determined that the teacher's use of 63 consecutive sick days was permissible because the number of sick days used did not exceed the number his contract allowed, and the district had not shown that the teacher's employment at FMC negated his claim that he was suffering mental illness related to his employment with the district.

"Appellee's suggestion that appellant's absenteeism was excessive has, at first glance, some appeal. One must recall, however, that the 63 sick days appellant used in the spring of 1978 were within the maximum number of days allowed under the policy. Clearly, then, appellee's claim of excessiveness is untenable. Surely, if appellee believed that use of 63 sick leave days was excessive, it would have set the maximum somewhat below that number."

Charles Gladstone v Highland Park Board of Education, TTC 80-14

IMPACT OF HB 5223

- This case illustrates the importance of using factors outside the classroom, such as teacher attendance, to get a more thorough understanding of a teacher's effectiveness.
- House Bill 5223 would limit the effect of such factors to only 10% of the overall evaluation and, in turn, limit school districts' authority to negatively rate teachers who demonstrate chronic absenteeism.

Gerald Langworthy v Reed City Area Public Schools, TTC 07-40

FACTS

- Appellant teacher reportedly used marijuana at a large outdoor music festival during a summer trip, admittedly aware that other people from his community would be at the festival and would see him using marijuana.
- Upon his return, Appellant began to say he was possessed by an evil spirit and he claimed to hear voices, and was reportedly “very disoriented and very paranoid,” including making delusional statements and pinning his wife down on the bed, with his arm over her neck.
- Appellant’s delusional behavior continued after a police officer arrived at his home and arrested him for domestic spousal abuse.
- On the way to the hospital, the teacher repeatedly smashed his face against the patrol car’s Plexiglas divider. He had to be removed forcibly from the patrol car. He was later admitted to the psychiatric ward due to drug-induced psychosis.
- The teacher’s conduct was well known in the community although there was no evidence of media publicity of the behavior.

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Gerald Langworthy v Reed City Area Public Schools, TTC 07-40

- Notwithstanding the notoriety of the incident and the objections of community members to the teacher's return to the classroom, the Commission revoked the district's discharge and imposed a suspension with reinstatement.
- The Commission downplayed concerns about the teacher's effectiveness as a role model for students and his psychotic episode because the incidents occurred outside of the school environment and did not directly involve students.
- Additionally, the Commission failed to fully consider the notoriety of the incident and focused more intensely on the teacher's objective performance within the classroom.

*Gerald Langworthy v Reed City Area Public
Schools, TTC 07-40*

IMPACT OF HB 5223

- Implementation of House Bill 5223, which imposes limitations on the role of parent and student feedback and fails to take into account other outside concerns, would lead to similar results.
- In effect, the bill would allow teachers to act as poor role models outside the classroom as long as they scored effectively on standardized test scores and in classroom observations.

Frank Cona v Avondale School District,
TTC 11-61

FACTS

- As a result of a probation violation, the teacher was offered the opportunity to plead guilty to violation of his probation and serve an additional year of probation or serve jail time.
- The teacher refused the plea deal for additional probation and instead was ordered to serve 30 days in jail.

Frank Cona v Avondale School District,

TTC 11-61

- ALJ disagreed with the district's decision to discharge the teacher and noted that there was no presumption that an impaired driving conviction was reasonably and adversely related to one's ability to teach, and thus could not be said to have a "*direct nexus*" to the teacher's responsibilities as a teacher and imposed a 20 day unpaid suspension instead.
- Commission deferred to the board's decision and upheld the teacher's discharge, noting there were some factors that would have supported a less drastic level of discipline, including evidence of the teacher's competence.
- Ultimately, the Commission recognized that its duty was "not to fashion the penalty that [the Commission] would prefer but to review the controlling board's decision for arbitrariness and capriciousness." Under this standard of review, the Commission found that the administrative law judge erred in declining to order appellant's discharge.

Frank Cona v Avondale School District,
TTC 11-61

IMPACT OF HB 5223

- This case demonstrates the importance of teacher attendance and parent feedback.
- If, as under House Bill 5223, school districts cannot take into account such factors, there may be more teachers who maintain their jobs as teachers and continue to receive effective ratings despite considerable misdeeds outside of the classroom.

Clarence Davis v Board of Education of the Jackson Public Schools, TTC 03-09

FACTS

- The teacher, Mr. Davis, permitted a minor student to spend the night at his home without making any attempt to contact the student's parents.
- Mr. Davis hugged and kissed the student on several occasions at school and discussed the student's sex life.
- Mr. Davis admitted he did not understand why the student's parents were upset regarding these conversations, and failed to see why his actions were inappropriate for his role as a teacher.
- As a result, the District discharged the teacher.

Clarence Davis v Board of Education of the Jackson Public Schools, TTC 03-09

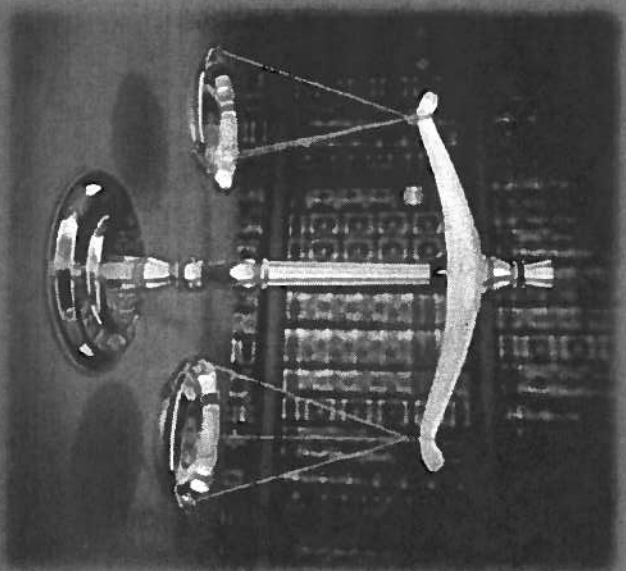
- Notwithstanding the teacher's inappropriate conduct with his students, the ALJ and the Commission found that the district did not have just cause to impose discharge, and instead reduced the teacher's discharge to a suspension for one year.
- Notably, this case was decided with reliance on the just cause standard. Had the case been brought under the revised "arbitrary or capricious" standard of review, the teacher's discharge would likely have been upheld on the basis of teacher's actions in allowing a student to stay at his home without any notice to parents or other authorities.

*Clarence Davis v Board of Education of the
Jackson Public Schools, TTC 03-09*

IMPACT OF HB 5223

- Implementation of House Bill 5223 would limit a district's ability to discharge a teacher engaging in similar conduct, by finding the teacher's competency in the classroom and the performance of his students outweigh his incident of indiscretion outside of the classroom environment.

Increased Risk of Litigation



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HOUSE BILL 5223

INCREASED RISK OF LITIGATION

- Nine state mandated assessment requirements make teacher evaluations ripe for legal challenges by teachers who receive unfavorable evaluations.
- For example, if a teacher is discharged due to a poor evaluation they can assert that the assessment was not “pedagogically appropriate” as required by law.
- The litigation burden will be on the school district to prove that the assessment was “pedagogically appropriate” and that the other eight state mandated requirements for assessments were met.
- School districts will need a “preponderance of evidence” to meet its burden.

HOUSE BILL 5223

INCREASED RISK OF LITIGATION

- In addition to increased potential for litigation regarding performance evaluations, HB 5223 fails to incorporate a limitation on damages which correlates with Sec. 1248(3) of the Code, which provides:

If a teacher brings an action against a school district or intermediate school district based on this section, the teacher's sole and exclusive remedy shall be an order of reinstatement commencing 30 days after a decision by a court of competent jurisdiction. The remedy in an action brought by a teacher based on this section shall not include lost wages, lost benefits, or any other economic damages.

HOUSE BILL 5223

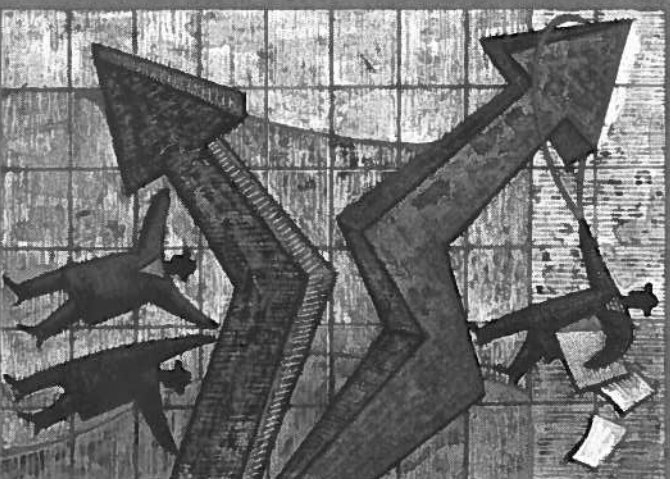
INCREASED RISK OF LITIGATION

Page 15-16 (Section 380.1249(4)(a)(i)):

Does your school district have the financial ability to defend litigation regarding the following:

- (A) Is pedagogically appropriate.
- (D) As appropriate for the grade level, assesses career and college readiness.
- (F) Measures proficiency.
- (I) As appropriate for the grade level, is aligned to college entrance examinations or is a college entrance examination.

Significantly Decreases Impact of "Minimally Effective" Rating



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LAPEER COMMUNITY SCHOOLS

- ❑ In 2012-2013, 9 teachers were rated Minimally Effective or Ineffective. Each rating was based in part on “locally adopted factors,” such as parent/student complaints and peer input.
- ❑ If House Bill 5223 was in effect, almost all of these teachers would have received a higher rating.
- ❑ Because of Minimally Effective/Ineffective ratings, 4 teachers voluntarily resigned from the district.

SALINE AREA SCHOOLS

- ☐ In 2012-2013, 6 teachers were rated Minimally Effective on their year-end evaluations. Each rating was based on “locally adopted factors” such as attendance, parent rapport, student rapport and relationships with peers.
- ☐ If House Bill 5223 was in effect, each of these teachers would have received a higher rating.
- ☐ Because of the Minimally Effective/Ineffective ratings, 3 teachers voluntarily resigned from the district.

PLYMOUTH-CANTON COMMUNITY SCHOOLS

- ☐ In 2011-2012, 12 teachers were rated Minimally Effective or Ineffective. Each rating was based in part on “locally adopted factors” such as parent rapport, student rapport and relationships with peers.
- ☐ If House Bill 5223 was in effect, five of these teachers would have received a higher rating.
- ☐ Because of the Minimally Effective/Ineffective ratings, 3 teachers voluntarily resigned, and 1 teacher’s discharge is pending before the State Tenure Commission.

GRAND BLANC COMMUNITY SCHOOLS

- ❑ In 2012-2013, 6 teachers and 2 administrators were rated Minimally Effective or Ineffective on their year-end evaluations. Each rating was based on “locally adopted factors” such as attendance, parent rapport, student rapport and relationships with peers.
- ❑ If House Bill 5223 was in effect, each of these teachers would have received a higher rating.
- ❑ Because of the Minimally Effective/Ineffective ratings, 3 voluntarily resigned from the district; 1 appealed discharge to the Tenure Commission and the case was dismissed.

